IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.285 OF 1999

Shri Yashwant Balaji Kalbhor and Anr. .. Appellants

Versus

Dnyaneshwar Vishwas Kalbhor and Ors. .. Respondents

Shri S.V.Sadavarte for appellants

Shri S.B.Deshmukh h/f A.V.Anturkar for respondents.

CORAM : P.V.KAKADE,J.

DATE : 25TH NOVEMBER, 2004

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the learned Addl. District Judge, Pune dated 22.3.1999 partly allowing the appeal and whereby granted perpetual injunction against the present respondent to the effect that he was restrained as not to encroach upon the land Gat No.2263 except suit road having 8 feet in width and 226 feet in

length leading to gat No.2299. This appeal was preferred against the judgment and order passed by Civil Judge, Junior Division, Pune on 16.10.1993 by which appellant-plaintiff's suit was dismissed.

2. I heard the learned counsel for both the parties. Perused the record including the document of notice round which the entire issues revolved.

. It was the case of the plaintiffs that they were the owner and possessor of the suit property having Gat No.2263 since their forefathers. The land Gat No.2299, Gat No.2263 was owned by the respondents/defendants. Besides this, respondents are having one more Gat No.2262 wherein they have built up residential premises. The respondents having access to Gat No.2299 from Phursunghi-Loni Kalbhor Road. Another road is called as Bazarmala road and both the road lead to Loni-Kalbhor. Bazarmala road is passing from Southern side of Gat No.2263, West to East and then to south to North, which turns to Loni-Kalbhor. It was alleged that in order to have an access said road, the respondents were trying to encroach upon the North East corner of Gat No.2263 by spreading Murum and stones. The said disputed road was

about 16 x 226 ft. The respondent resisted but in vein and hence the suit came to be filed for declaration.

. The respondent challenged the suit on the ground that the road existed for more than 20 years and atlest since prior to 1948, which was reflected in the notice issued on behalf of the plaintiff. Inspite of this aspect, suit came to be dismissed by the lower court. However, in the appeal the lower appellate court judge upheld the contention of the defendant to the effect that the road having 8 feet in width and 226 feet in length leading to Gat No.2299 did exist for the use of the respondents and he was further injuncted against making encroachment upon land on gat No.2263 belonging to the plaintiff except the suit road. Hence the present appeal.

3. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned appellate court judge appears to have appreciated the evidence on record in proper perspective and therefore, I do not see any reason to interfere with the findings recorded by the lower appellate court, especially when it is found that

plaintiff has in fact given admission in his notice of the year 1948 about the existence of the suit road through Plaintiff’s land Gat No.2263.

. Under these circumstances the appeal appears to have no merits and deserves to be dismissed and stands dismissed with no order as to costs. Consequently the civil application also stands dismissed with no order as to costs.